Donelan, Cleary, Wood & Maser, P.C. Proposition No. 8 97 / FILED

ATTORNEYS AND COUNSELORS AT LAW **SUITE 750** 1100 New York Avenue, N.W.

Washington, D.C. 20005-3934

SEP 29 1995 4 10 PM INTERNATALE COMMERCE COMMISSION

TELECOPIER: (202) 371-0900

EMBER 29, 1995

Recordation No. 8994-C and 8994-D

H2.00

Dear Mr. Williams:

OFFICE: (202) 371-9500

On behalf of Northbrook Rail Corporation, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, executed counterparts of two secondary documents not previously recorded, the first one (8994-C) is entitled Memorandum of Assignments of Interests under Equipment Lease ("Assignment") dated as of <u>September</u>. 1995 and the second one (8994-D) is entitled Assignment of Original Lease ("Assignment of Original Lease") Original Lease"), dated as of September 15, 1995.

I. The parties to the enclosed Assignment (8994-C) are:

Northbrook Rail Corporation Suite 119 2025 South Arlington Heights Road Arlington Heights, Illinois 60005

SUCCESSOR LESSOR/ CURRENT LESSOR (ASSIGNEE)

The CIT Group/Equipment Financing, Inc. 1211 Avenue of the Americas New York, NY 10036

OWNER OF EQUIPMENT

Chicago and North Western Railway Company 165 North Canal Street Chicago, IL 60606

SUCCESSOR LESSEE/ **CURRENT LESSEE** (ASSIGNEE)

The Assignment, among other things, acts to place of record through assignments the name of the current Lessor and Lessee and to show a change in the identification numbers used on the units of equipment covered by the Equipment Lease recorded under Recordation No. 8994 and should be recorded under the next available letter under Recordation No. 8994, which we believe is -C.

The equipment covered by the Assignment is the equipment covered by the Equipment Lease recorded under Recordation No. 8994, presently identified under CNW 742000-742149

A short summary of the Assignment to appear in the ICC Index is as follows:

"Assigns interest as Lessor and interest as Lessee to new Lessor and Lessee and changes identification numbers of equipment."

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1. <u>Please index separately the name of the above-mentioned Successor Lessor/Current Lessor (Assignee)</u> in the "Vendee/Assignee" Index Book ("white pages") as follows:

Index under Northbrook Rail Corporation, saying, "See Recordation No. 8994-C."

2. <u>Please index separately the name of the above-mentioned Successor Lessee/Current Lessee (Assignee)</u> in the "Vendee/Assignee" Index Book ("white pages") as follows:

Index under Chicago and North Western Railway Company, saying, "See Recordation No. 8994-C."

II. The parties to the enclosed Assignment of Original Lease (8994-D) are:

Northbrook Rail Corporation Suite 119 2025 South Arlington Heights Road Arlington Heights, Illinois 60005

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ASSIGNOR

The CIT Group/Equipment Financing, Inc. 1211 Avenue of the Americas New York, NY 10036

ASSIGNEE

The Assignment of Original Lease is an assignment of a security interest by Northbrook Rail Corporation, as Assignor, to The CIT Group/Equipment Financing, Inc., as Assignee, of the interest of Northbrook Rail Corporation in and to the Equipment Lease recorded under Recordation No. 8994 and should be recorded under the next available letter under Recordation No. 8994, which we believe will be 8994-D.

The equipment covered by the Assignment of Original Lease is the equipment covered by the Equipment Lease recorded under Recordation No. 8994, presently identified under CNW 742000-742149.

A short summary of the Assignment of Original Lease to appear in the ICC Index is as follows:

"Assignment of security interest in Equipment Lease by Lessor/Assignor to Assignee".

Please index separately the name of the above-mentioned Assignee in the "Vendee/Assignee" Index Book ("white pages") as follows:

Index under The CIT Group/Equipment Financing, Inc., saying, "See Recordation No. 8994-D".

Enclosed is a check in the amount of forty two dollars (\$42.00) in payment of the filing fees.

Once the filings have been made, please return to bearer the stamped counterpart(s) of the documents not required for filing purposes, together with the ICC letter/receipt acknowledging the filing, and the two extra copies of this letter of transmittal.

Attorney for Northbrook Rail Corporation for the purpose of this filing.

Honorable Vernon A. Williams Secretary Interstate Commerce Commission Washington, DC 20423

Enclosures

8360-020

No. 5439 P. 31/46

ASSIGNMENT OF LEASE

ASSIGNMENT OF CNW LEASE made and entered into as of September 29, 1995 (the "Assignment"), by NORTHBROOK RAIL CORPORATION, an Illinois corporation (the "Assignor"), and THE CIT GROUP/EQUIPMENT FINANCING, INC., a New York corporation (the "Assignee").

WITNESSETH

WHEREAS, the items of railroad equipment (collectively the "Items" or "Equipment" and individually "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof were purchased new from Thrall Car Manufacturing Company (the "Manufacturer") in 1977 by No. 6 Rail Car Leasing Company ("No. 6 Rail Car"); and

WHEREAS, No. 6 Rail Car entered into that certain Equipment Lease dated as of August 3, 1977 with William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company ("Trustee") (the "Criginal Lease") covering the Equipment, recorded with the Interstate Commerce Commission ("ICC") September 14, 1977 under Recordation No. 8994; and

WHEREAS, No. 6 Rail Car and Trustee filed with the ICC on January 6, 1978 under Recordation No. 8994-A that certain First Amendment to Equipment Lease dated as of December 15, 1977; and

WHEREAS, by that Assignment and Assumption of Lease dated as of March 31, 1980, recorded with the ICC on July 7, 1983 under Recordation No. 8994-B. Trustee assigned all right, title and interest as lessee in the Original Lease, as amended to Chicago and North Western Transportation Company ("CNW Transportation Company"); and

WHEREAS, by that certain General Assignment and Bill of Sale executed December 29, 1988 and recorded with the ICC on March 23, 1989 under Recordation No. 16253, No. 6 Rail Car sold the Equipment to and assigned all right, title and interest in the Original Lease, to Chrysler Rail Transportation Corporation ("Chrysler Rail") and the Original Lease was further amended; and

WHEREAS, by that certain letter dated June 26, 1992 from CNW Transportation Company to Chrysler Rail, the Original Lease, as amended was renewed for five (5) years beyond the Original Lease termination date at the same rental as the Original Lease term; and

WHEREAS, effective May 6, 1994, CNW Transportation Company changed its name to Chicago and North Western Railway Company (including all successors and future assigns, "CNW Railway Company"), the current lessee (the "Original Lessee"); and

WHEREAS, to the best of the knowledge of the Assignor it appears that through a series of sales and unrecorded assignments, the Equipment was sold and the right, title and interest, as lessor under the Original Lease, as amended was assigned by Chrysler Rail to Chrysler Capital Income Partners, L.P., then from Chrysler Capital Income Partners, L.P. to First Union Commercial Corporation and then from First Union Commercial Corporation to Assignor, as owner of the Equipment and successor lessor under the Original Lease, as amended; and

WHEREAS, the Assignee is purchasing from the Assignor the Equipment by that Purchase and Sale Agreement dated as of September 29, 1995; and

WHEREAS, the Assignor and the Assignee are concurrently entering into the Equipment Lease Agreement dated as of September 29, 1995 (as at any time amended, supplemented or modified, the "Lease"), pursuant to which the Assignor has agreed to lease the Equipment from the Assignee; and

WHEREAS, the Original Lease, as heretofore amended and assigned and as it may be further amended, modified or supplemented shall hereinafter be called the "CNW Lease";

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

- 1. <u>Definitions</u>. Capitalized terms used but not defined herein shall have the meanings specified in the Lease.
- 2. Assignment of CNW Lease. For value received and to secure the due and punctual payment and performance of all of the Assignor's obligations under the Lease which obligations are hereby incorporated by this reference as fully as if set forth in their entirety herein (the "Obligations"), including, without limitation, the due and punctual payment of all Fixed Rental payments, the Assignor hereby collaterally assigns, transfers and conveys to the Assignee, its successors and assigns, all its right, title and interest in, to and under the CNW Lease, including but not limited to:
 - (a) all the Assignor's rights and interests as sublessor in and to the Equipment at any time subject to the CNW Lease;
 - (b) any and all rents, insurance and condemnation proceeds, Casualty Value payments and other moneys due or to become due, and any and all claims, rights, powers, remedies, title and interest of the Assignor in and to or under or

arising out of the CNW Lease (including, without limitation, all claims for damages or other sums arising upon sale or other disposition of, or loss of use of or requisition of title or use of or a Casualty Occurrence with respect to the Equipment at any time subject to the CNW Lease or upon any event of default specified therein (hereinafter referred to as a "CNW Lease Event of Default"));

- (c) all rights, powers, privileges, remedies and other benefits of the Assignor under the CNW Lease, including, without limitation, (i) all rights to make determinations, exercise options or elections, give or withhold consents, waivers and approvals, give notices and exercise remedies (including the right to declare or exercise remedies with respect to a CNW Lease Event of Default and to repossess any property), to appoint any appraiser or to take any other action under or in respect of the CNW Lease or accept any surrender or redelivery of the Equipment, and (ii) all the rights, powers and remedies on the part of the Assignor, whether arising under the CNW Lease or by statute or at law or in equity or otherwise, as a result of any CNW Lease Event of Default; and
 - (d) all proceeds of the foregoing.

This Assignment is a collateral assignment of present and future interests in the CNW Lease and it shall be effective, and, to the extent consistent with any applicable law, the security interests created hereby shall attach, immediately upon execution of this Assignment. The Assignor shall not, at any time prior to termination of the CNW Lease and redelivery of the Equipment, consent to any amendment, supplement, change or modification to, or any waiver of, any provision of the CNW Lease or any transfer of any interest of the CNW Railway Company under the CNW Lease without the prior written consent of the Lessor which may be withheld at its absolute discretion (except for the transfer of the interest of CNW Railway Company, as lessee, (a wholly owned corporate affiliate of Union Pacific Corporation) in connection with the acquisition of CNW Railway Company by Union Pacific Corporation and the corporate reorganization consequent thereto). Notwithstanding any provision of this Assignment to the contrary, Assignor shall be entitled to exercise all rights, powers, privileges, remedies and benefits under the CNW Lease, unless a Lease Event of Default has occurred and is continuing, except that at no time will Assignor be permitted to collect rental payments under the CNW Lease.

3. <u>Performance of Original Lessor's Obligations</u>. It is expressly agreed that anything herein contained to the contrary notwithstanding, (i) the Assignor shall remain liable under the CNW Lease and all related documentation to perform all the obligations

assumed by it thereunder to the same extent as if this Assignment had not been executed and nothing in the CNW Lease or this Assignment shall relieve the Assignor of any obligations under the Lease, (ii) the Assignee shall not have any obligation or liability under the CNW Lease or any related documentation by reason of or arising out of this Assignment, nor shall the Assignee be required or obligated in any manner to perform or fulfill any obligation of the Assignor under or pursuant to the CNW Lease or any related documentation, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or to take any other action to collect or enforce the payment of any amounts to which it or they may be entitled hereunder at any time or times and (iii) at any time when a Lease Event of Default has occurred and is continuing, at the Assignee's option, the Assignee may, but shall not be obligated to, perform, or cause to be performed, all or any part of the obligations and agreements of the Assignor under the CNW Lease or any related documentation, without releasing the Assignor therefrom. Nothing in this Assignment shall in any way diminish or limit the provisions of any indemnity given by the Assignor or CNW Railway Company.

- 4. Event of Default. Upon the occurrence of any Event of Default under the Lease and at any time thereafter so long as the same shall be continuing, the Assignee may, at its option, exercise one or more of the remedies set forth below or in the Lease, or which may be available to it under the Uniform Commercial Code whether or not applicable in the relevant jurisdiction, or take any other lawful action as the Assignee in its sole discretion may determine, which remedies and actions are cumulative and in addition to every other right or remedy provided by law:
 - 4.1. Collection of CNW Lease Payments. The Assignee may collect and retain all rents, proceeds, payments and other moneys due or to become due under the CNW Lease or the other property assigned hereunder and apply such amounts to the payment of the Obligations, all as the Assignee, in its discretion, shall determine; and/or
 - 4.2. Maintenance of CNW Lease. The Assignee may assume all or any part of the Assignor's right, title and interest in the CNW Lease or the other property assigned hereunder and maintain the CNW Lease in full force and effect, with the Assignee substituted for the Assignor or beneficiary thereunder, and in any such event all the right, title and interest of the Assignor therein shall be extinguished and the Assignee shall be entitled to collect and retain all rents and payments thereunder; and/or

- 4.3. <u>Sale</u>. The Assignee may sell at public or private sale, without appraisal, for such price as it may deem fair, the CNW Lease and all the Assignor's rights, title and interest therein, in which case the Assignee will give the Assignor and CNW Railway Company, as the case may be, at least 15 days' notice of the date fixed for any public sale or of the date on or after which will occur the execution of any contract providing for any private sale thereof, and each purchaser at any such sale shall hold such property absolutely free from any claim or right on the part of the Assignor, the Assignor hereby waiving and releasing (to the extent permitted by law) all rights of redemption, stay, appraisal, reclamation and turnover which the Assignor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.
- 5. Expenses and Fees. The Assignor shall pay to the Assignee and its successors and assigns on demand all reasonable attorney's fees and other reasonable expenses incurred by the Assignee in protecting its interests granted hereunder or in exercising its rights and remedies provided hereunder, together with interest on such sums at the rate of 10% per annum (or the lawful rate, whichever is less) from the date when such expenses are so incurred to the date of payment thereof.
- 6. Waiver: Invalidity of Remedies. Subject to paragraph 14 hereof, the Assignor waives any right to require the Assignee to pursue any other remedy it may have against the Assignor or any guaranter or surety or provider of credit support. The invalidity or unenforceability of any remedy in any jurisdiction shall not invalidate such remedy or render it unenforceable in any other jurisdiction. The invalidity or unenforceability of any of the remedies provided herein in any jurisdiction shall not in any way affect the right to enforcement in such jurisdiction or elsewhere of any of the other remedies provided herein.
- 7. Power of Attorney. Subject to paragraph 14 hereof, the Assignor does hereby constitute the Assignee, and its successors and assigns, the Assignor's true and lawful attorney-infact, with full power (in the name of the Assignor or otherwise) and at the expense of the Assignor but for the use and benefit of the Assignee, at any time after a Lease Event of Default has occurred and for so long as it is continuing, to enforce each and every term and provision of the CNW Lease and other property assigned hereunder, to ask, require, demand, receive, collect, compound and give acquittance and discharge for any and all moneys and claims for moneys due and to become due under or arising out of the CNW Lease and other property assigned hereunder, to endorse any checks or other instruments or orders in connection therewith, to

settle, compromise, compound or adjust any such claims, to exercise and enforce any and all claims, rights, powers or remedies of every kind and description of the Assignor under or arising out of the CNW Lease and other property assigned hereunder, to file, commence, prosecute, compromise and settle in the name of the Assignor or the Assignee or otherwise any suits, actions or proceedings at law or in equity in any court, to collect any such moneys or to enforce any rights in respect thereto on all other claims, rights, powers and remedies of every kind and description of the Assignor under or arising out of the CNW Lease and the other property assigned hereunder and generally to sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with any of such claims, rights, powers and remedies as fully and completely as though the Assignee were the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Assignee to be necessary or advisable or convenient or proper in its absolute discretion.

- 8. Execution of Documents. The Assignor agrees that at any time or from time to time, upon the written request of the Assignee, the Assignor shall promptly and duly execute and deliver any and all such further instruments, documents and financing statements and do such other acts and things as the Assignee reasonably may deem necessary or desirable in order to obtain the full benefits of this Assignment and the rights and powers granted herein.
- 9. <u>Assignment: Payments</u>. The Assignee may at any time sell, assign, transfer or otherwise dispose of its interest in the Lease or this Assignment and in the property and security created thereby and hereby, in accordance with the provisions of the Lease. The Assignor shall not assign, delegate, pledge or otherwise encumber any of its rights or obligations hereunder except as provided herein, except that Assignor shall have the right to and shall assign this Assignment in connection with and permitted assignment of the Lease.
- Assignor's Representations and Warranties. The Assignor represents and warrants that the CNW Lease is in full force and effect and is enforceable against Assignor in accordance with its terms, that the Assignor is not in default thereunder and that it has not assigned, transferred or pledged, and hereby covenants that it will not assign, transfer or pledge, the whole or any part of the rents, moneys, claims, rights, powers, remedies, titles or interests hereby assigned to anyone other than the Assignee, its successors and assigns.
- 11. Governing Law. This Assignment, including all matters of construction, validity and performance, shall in all respects be governed by, and construed in accordance with, the law

of the State of New York applicable to contracts made in such State by residents thereof and to be performed entirely within such State without regard to its conflicts of laws rules.

- 12. <u>Counterparts</u>. This Assignment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.
- 13. <u>Miscellaneous</u>. This Assignment may not be amended, supplemented, modified or waived without the prior written consent of the Assignee which may be withheld at its absolute discretion. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Except as otherwise provided in this Assignment, all notices hereunder shall be in writing and shall be given in the manner and at the addresses provided for notices under the Lease.
- [OPEN] 14. Remedies. Notwithstanding any provision of this Assignment or the Lease to the contrary, in the event that Assignee exercises any remedy under this Assignment or the Lease or otherwise takes any action the effect of which is to terminate or adversely affect Assignor's rights or remedies against CNW under the CNW Lease, Assignee shall be deemed to have made an election to look solely to CNW for the payment and performance of all obligations under the Lease and the CNW Lease, Assignor shall be released from all of its obligations under the Lease and Assignor shall have no further duties or liabilities under this Assignment.

IN WITNESS WHEREOF, the Assignor and the Assignee have duly executed this Assignment as of the date first set forth above.

NORTHBROOK RAIL CORPORATION, as Assignor,

By:

Name: GERALD L. KILCONE

Title: President

THE CIT GROUP/EQUIPMENT FINANCING, INC., as Assignee,

By:	
Name:	
Title:	

IN WITNESS WHEREOF, the Assignor and the Assignee have duly executed this Assignment as of the date first set forth above.

NORTHBROOK RAIL CORPORATION, as Assignor,

Ву:			
Name:			
Title	:		

THE CIT GROUP/EQUIPMENT FINANCING, INC., as Assignee,

By: Untous de mare.
Name:

Title:

STATE OF
COUNTY OF Cook) SS:
On this29th_ day of _September, 1995 before me personally appearsGerald L. Kilcoyne, to me personally known, who by me duly sworn, says that he/she is the of NORTHBROOK RAIL CORPORATION ("Corporation"), that the foregoing instrument was signed on behalf of the said Corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Corporation.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal. "OFFICIAL SEAL" CARMEN M. PALKA NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 11/28/98 Notary Public
[SEAL]

My Commission expires: November 28, 1998

STATE OF NEW YORK)

COUNTY OF NEW YORK)

On this 29 day of September, 1995, before me personally appeared VICTORIA McMANUS, to me personally known, she/he who being by duly sworn, me says that Vice-President of The CIT Group/Equipment Financing, Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she/he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Seal]

My Commission Expires:

ROSE MARY DINNHAUPT Notary Public, State of New York No. 31-5010315 Qualified in New York County Commission Expires March 29, 199

SCHEDULE A (to Assignment of CNW Lease)

MANUFACTURER:

Thrall Car Manufacturing

Company

PLANT OF MANUFACTURER:

Chicago Heights, Illinois

DESCRIPTION OF EQUIPMENT:

150 52'6" Gondola Cars originally bearing road numbers ROCK 680150 to 680299, both inclusive, and now bearing road numbers CNW 742000 - 742149,

both inclusive

SPECIFICATIONS:

Thrall - GN 100-52-209